

1 Jack Silver, Esq. SBN #160575  
Law Office of Jack Silver  
2 Post Office Box 5469  
Santa Rosa, CA 95402-5469  
3 Tel. (707) 528-8175  
Fax. (707) 528-8675  
4 lhm28843@sbcglobal.net

5 Attorneys for Plaintiff  
NORTHERN CALIFORNIA RIVER WATCH  
6

7 UNITED STATES DISTRICT COURT  
8 NORTHERN DISTRICT OF CALIFORNIA  
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10 NORTHERN CALIFORNIA RIVER  
WATCH, a non-profit corporation,

11 Plaintiff,

12 v.

13 BAY AREA DIABLO PETROLEUM  
COMPANY dba GOLDEN GATE  
14 PETROLEUM COMPANY and DOES  
1-10, Inclusive,

15 Defendants  
16 \_\_\_\_\_/

CASE NO. C08-01613 BZ

JOINT CASE MANAGEMENT  
STATEMENT AND [PROPOSED] ORDER

Date: July 7, 2008  
Time: 4:00 p.m.  
Ctmm: G, 15<sup>th</sup> Floor  
Judge: Hon. Bernard Zimmerman

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18 **JOINT CASE MANAGEMENT STATEMENT**

19 Pursuant to Rule 16 of the Federal Rules of Civil Procedure, U.S. District Court, Northern District,  
20 Local Rules 16-9 and 16-10, and this Court's Standing Order effective March 1, 2007, Plaintiff  
21 NORTHERN CALIFORNIA RIVER WATCH and Defendant BAY AREA DIABLO PETROLEUM  
22 COMPANY dba GOLDEN GATE PETROLEUM COMPANY jointly submit this Case Management  
23 Statement and Proposed Order, and request that the Court adopt it as its Case Management Order.

24 **I. JURISDICTION AND SERVICE**

25 Plaintiff alleges that this Court has subject matter jurisdiction over all federal causes of action  
26 cited in its Complaint pursuant to the Resource Conservation and Recovery Act ("RCRA") Section  
27 7002(a) and 7002(b), 42 U.S.C. § 6972 (a) and § 6972(b) and 28 U.S.C. § 1221. Inasmuch as the events  
28

1 enumerated in the Complaint have taken place in the Northern District of California, Plaintiff alleges  
2 that venue is properly placed in this Court.

3 Defendant BAY AREA DIABLO PETROLEUM COMPANY dba GOLDEN GATE  
4 PETROLEUM COMPANY has been served with the Complaint, but has not made an appearance in this  
5 action to date, and to Plaintiff's knowledge is currently unrepresented.

## 6 II. FACTS

### 7 1. ALLEGATIONS OF THE COMPLAINT

8 Plaintiff alleges Defendant has violated various provisions of the RCRA and regulations adopted  
9 pursuant to the RCRA, as well as a number of California statutes which supplement the environmental  
10 protections implemented by the provisions of the RCRA. Plaintiff claims these violations have occurred  
11 at Defendant's former underground storage tank ("UST") site located at 3575 Pacheco Boulevard in  
12 Martinez, California, as well as at the Brentwood Cardlock UST site, located at 8285 Brentwood  
13 Boulevard, Brentwood, California (hereafter "the Facilities").

14 Plaintiff served Defendant with a Notice of Violations and Intent to File Suit under the Resource  
15 Conservation and Recovery Act on or about November 1, 2007, and filed the initial Complaint in this  
16 action on March 25, 2008. Plaintiff alleges that petroleum contamination was detected beneath the  
17 Facilities in approximately 1992 and again in 2004 (Martinez site), and in 1996 (Brentwood site) as the  
18 result of leaks in the USTs, piping systems, and/or surface spills. Plaintiff alleges such contamination  
19 violates regulations that have become effective pursuant to the RCRA, and that such contamination  
20 includes known carcinogens and/or reproductive toxins, either of which pose a risk of imminent and  
21 substantial endangerment to human health and/or to the environment. Plaintiff acknowledges that some  
22 remediation work may have occurred at the Facilities under the direction of local and state regulatory  
23 agencies, but it is unsatisfied with the nature and extent of the investigation and/or remediation.

24 Plaintiff requests a declaration that Defendant whether through its operations, leasing  
25 arrangements, or ownership of the Facilities or the real estate on which the Facilities are situated, has  
26 violated the RCRA, and seeks civil penalties, fees and costs, and various injunctive relief or orders  
27 requiring Defendant to conduct further investigations, remediate the Facilities without further delays,  
28

1 and refrain from any additional discharges of petroleum products and constituents at the Facilities.

2 2. DEFENDANT'S DEFENSES TO THE ALLEGATIONS

3 a. Defendant takes the position that *IT HAS ALREADY MADE A SETTLE-*  
4 *MENT WITH PLAINTIFF AND THAT NO FURTHER "AMBULANCE*  
5 *CHASING" WOULD TAKE PLACE.*

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7  
8 III. FACTUAL AND LEGAL ISSUES IN DISPUTE

9 Without waiving any rights or arguments as to any legal issues and defenses in this case, the  
10 parties submit that the following are some of the legal issues presented:

11 1. PLAINTIFF

12 a. Plaintiff claims Defendant's actions and practices at the Facilities constitute ongoing  
13 violations of the RCRA.

14 b. Plaintiff alleges the Facilities present an imminent and substantial harm to public health  
15 and/or the environment.

16 c. Plaintiff claims Defendant has been entirely unsuccessful in abating contamination at the  
17 Facilities.

18 d. Plaintiff claims its members have been, are being, or will be injured by Defendant's  
19 violations of the RCRA as alleged in Plaintiff's Complaint. .

20 2. DEFENDANT

21 a. Defendant takes the position that  
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1 **IV. MOTIONS**

2 There are no motions are pending. Plaintiff does not anticipate filing any pre-trial motions.

3 **V. AMENDMENT OF PLEADINGS**

4 Plaintiff does not anticipate adding any parties or claims in this action at this time.

5 **VI. DISCLOSURES**

6 The parties agree that Initial Disclosures pursuant to FRCP Rule 26(a) will be exchanged on or  
7 before August 30, 2008, if necessary.

8 **VII. DISCOVERY**

9 The parties agree (and propose to the Court) that all pretrial discovery and other pretrial  
10 proceedings, including initial disclosures and pretrial motions of any sort, shall be mutually stayed. Such  
11 stay shall expire upon forty-five (45) calendar days after the Meet and Confer which the parties have not  
12 as yet scheduled.

13 The parties agree to the following discovery plan:

14 Each side will submit no more than fifty (50) interrogatories. The last day to exchange expert  
15 disclosure and expert witness reports shall be May 11, 2009, and the last day to exchange expert rebuttal  
16 witness reports shall be July 6, 2009. Expert witness discovery shall be completed by September 7,  
17 2009.

18 **VIII. RELATED CASES**

19 There are no related cases or proceedings pending before another judge of this Court, or before  
20 another court or administrative body.

21 **IX. RELIEF SOUGHT**

22 **1. DECLARATORY AND INJUNCTIVE RELIEF**

23 Plaintiff requests this Court enjoin Defendant from violating the RCRA and/or the regulations  
24 pursuant to this statutory scheme. Plaintiff further requests injunctive relief requiring that Defendant:

25 (a) be enjoined from further discharging at the Facilities;

26 (b) investigate and determine the extent of the alleged pollution and contamination at the  
27 Facilities and the means to remediate the alleged contamination; and,  
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(c) fully remediate the ongoing contamination at the Facilities using the best available technology once adequately characterized and delineated.

**2. CIVIL PENALTIES**

Plaintiff requests the Court assess civil penalties against Defendant pursuant to the penalty provisions as contained in the RCRA. .

**3. ATTORNEYS' FEES AND COSTS**

Plaintiff requests the Court award costs, including reasonable attorney, expert, witness, and consultant fees, as authorized by the RCRA.

**X. SETTLEMENT AND ADR**

The parties have not as yet agreed to discuss the resolution of this matter, ADR options and plans, without the necessity of further litigation. Plaintiff has filed its ADR Certification

**XI. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

Plaintiff agrees to a magistrate judge for all purposes except trial. Defendant has not yet so consented or opposed.

**XII. OTHER REFERENCES**

This matter is not suitable for reference to binding arbitration, a special master or the Judicial Panel on Multidistrict Litigation.

**XIII. EXPEDITED SCHEDULE**

The parties agree this is not the type of case which can be handled on an expedited basis with streamlined procedures. The parties have agreed to discuss the resolution of this matter with the necessity of further litigation.

**XIV. SCHEDULING**

**LITIGATION DEADLINES (PROPOSED)**

- |  |                   |
|--|-------------------|
| a. Deadline for joining parties and amending pleadings:      | August 1, 2008    |
| b. Conclusion of pretrial discovery:                         | September 7, 2009 |
| c. Last day to file summary judgment or dispositive motions: | October 12, 2009  |
| d. Pretrial conference:                                      | November 16, 2009 |

e. Trial:

December 14, 2009

f. Anticipated length of trial:

3 court days (if bench trial)

**XV. TRIAL**

The parties anticipate this case will be tried by the Court, with an expected length of 3 days.

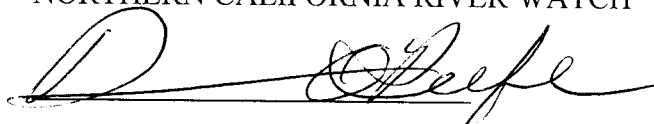
**XVI. DISCLOSURE OF NON-PARTY INTERESTED PERSONS**

Plaintiff filed its Certificate of Interested Parties under L.R. 3-16 on November 28, 2007.

DATED: 7/1/08

  
\_\_\_\_\_  
JACK SILVER  
Attorney for Plaintiff  
NORTHERN CALIFORNIA RIVER WATCH

DATED: 6/27/08

  
\_\_\_\_\_  
Attorney for Defendant  
BAY AREA/DIABLO PETROLEUM  
dba GOLDEN GATE PETROLEUM CO.

**CASE MANAGEMENT ORDER**

The Case Management Statement and Proposed Order are hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition, the Court orders:

DATED: \_\_\_\_\_

\_\_\_\_\_  
HON. BERNARD ZIMMERMAN  
U.S. DISTRICT COURT JUDGE